

ANSWER TO JURISDICTIONAL ALLEGATIONS

1. Answering paragraph one, Defendants admit that this court has subject matter jurisdiction over this dispute without regard to the citizenship of the parties pursuant to 29 U.S. C. § 1132(a)(1)(B) and (e)(1).

ANSWER TO CLAIM FOR RELIEF

2. Answering paragraph two, Defendants admit that Plaintiff was a participant in the Plan from December 15, 1998 through June 15, 2000. Defendants further admit that the Plan is an ERISA plan formed by the Charles Schwab Corporation, and that venue is proper in this judicial district. Except as expressly admitted herein, Defendants deny each and every remaining allegation contained in said paragraph.

3. Answering paragraph three, Defendants admit that at all times material hereto, Unum acted as the claims reviewing entity for the Plan. Defendants further admit that the Plan granted Unum discretionary authority with respect to determinations of eligibility for benefits, and with respect to interpretation of the terms of the Plan. Except as expressly admitted herein, Defendants deny each and every remaining allegation contained in said paragraph.

4. Answering paragraph four, Defendants admit that Plaintiff satisfied the Plan's definition of "total disability" for the period September 18, 2000 – March 16, 2003, but deny that Plaintiff satisfied the Plan's definition of "total disability" for any period subsequent to March 16, 2003. Except as expressly admitted herein, Defendants deny each and every remaining allegation contained in said paragraph.

5. Answering paragraph five, Defendants admit that the Plan paid benefits to Plaintiff for the period March 17, 2001 – March 16, 2003, but deny that Plaintiff satisfied the Plan's definition of "total disability" for any period subsequent to March 16, 2003. Except as expressly admitted herein, Defendant denies each and every remaining allegation contained in said paragraph.

6. Answering paragraph six, Defendants admit that Plaintiff submitted an appeal of the Unum's determination regarding Plaintiff's entitlement to benefits for the period

1 subsequent to March 16, 2003. Defendants further admit that, by letter dated May 20,
2 2003, Unum informed Plaintiff that the decision regarding Plaintiff's entitlement to
3 additional Plan benefits would be upheld. Except as expressly admitted herein, Unum
4 denies each and every remaining allegation contained in said paragraph.

5 7. Answering paragraph seven, Defendants deny each and every allegation
6 contained in said paragraph.

7 8. Answering paragraph eight, Defendants admit that Unum offered to reassess
8 Plaintiff's claim under certain terms and conditions, which were set forth in correspondence
9 to Plaintiff and which speak for themselves. Except as expressly admitted herein,
10 Defendants deny each and every remaining allegation contained in said paragraph.

11 9. Answering paragraph nine, Defendants admit that Plaintiff failed to comply
12 with the terms and conditions under which Unum offered to reassess Plaintiff's claim.
13 Except as expressly admitted herein, Defendants deny each and every remaining
14 allegation contained in said paragraph.

15 10. Answering paragraph ten, Defendants deny each and every allegation
16 contained in said paragraph.

17 11. Answering paragraph eleven, Defendants deny each and every allegation
18 contained in said paragraph, and further deny that Plaintiff is entitled to the relief sought.

19 12. Answering paragraph twelve, Defendants deny each and every allegation
20 contained in said paragraph, and further deny that Plaintiff is entitled to the relief sought.

21 **ANSWER TO PRAYER FOR RELIEF**

22 13. Answering Plaintiff's Prayer for Relief, Defendants deny that Plaintiff is
23 entitled to the relief sought, or relief in any amount, or at all.

24 **AFFIRMATIVE DEFENSES**

25 **FIRST AFFIRMATIVE DEFENSE**

26 14. Plaintiff's Complaint and each purported cause of action contained therein
27 fail to set forth facts upon which relief may be granted against Defendants.

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SECOND AFFIRMATIVE DEFENSE

15. Plaintiff's Complaint, and every cause of action alleged therein, are governed by the Employee Retirement Income Security Act of 1974 ("ERISA"); therefore, Plaintiff is not entitled to any remedy not provided under ERISA.

THIRD AFFIRMATIVE DEFENSE

16. Any alleged damage suffered by Plaintiff was in no way caused by, or the result of, any fault, act or omission by Defendants, or any of them, but rather was caused by circumstances, persons, and/or entities for which and/or for whom Defendants are not and may not be held responsible, including Plaintiff, and for which Defendants cannot be held liable.

FOURTH AFFIRMATIVE DEFENSE

17. The Plan defines "disability" as follows:

"You are disabled when Unum determines that:

- you are limited from performing the material and substantial duties of your regular occupation due to your sickness or injury; and
- you have a 20% or more loss in your indexed monthly earnings due to the same sickness or injury.

After 24 months of payments, you are disabled when Unum determines that due to the same sickness or injury, you are unable to perform the duties of any gainful occupation for which you are reasonably fitted by education, training or experience."

Plaintiff is not "disabled" as the Policy defines that term. Therefore, Plaintiff is not entitled to further Plan benefits under 29 U.S.C. §§ 1132, *et seq.* or under any other provision of ERISA.

FIFTH AFFIRMATIVE DEFENSE

18. The Plan contains the following provision:

"Disabilities, due to sickness or injury, which are primarily based on self-reported symptoms, and disabilities due to mental illness have a limited pay period up to

1 24 months.”

2 To the extent that Plaintiff's claim is based on self-reported symptoms and/or
3 mental illness, Plaintiff was entitled to, at most, a total of 24 months of Plan benefits.
4 Therefore, Plaintiff is not entitled to further Plan benefits under 29 U.S.C. §§ 1132, *et seq.*
5 or under any other provision of ERISA.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 19. The Plan provides that any payment of Plan benefits shall be reduced by
8 “deductible sources of income,” as defined in the Plan. Therefore, to the extent that
9 Plaintiff may demonstrate any entitlement to additional Plan benefits, such benefits must
10 be reduced by the amount of any deductible sources of income that Plaintiff has received.

11 **SEVENTH AFFIRMATIVE DEFENSE**

12 20. The Plan contains the following provision:

13 “When making a benefit determination under the policy, Unum has discretionary
14 authority to determine your eligibility for benefits and to interpret the terms and
15 provisions of the policy.”

16 The decision regarding Plaintiff's claim for additional disability benefits was
17 based on substantial evidence and was reasonable given the information available to
18 Unum, and as such did not constitute an abuse of the discretionary authority granted to
19 Unum under the Plan. Therefore, Plaintiff is not entitled to recovery of additional Plan
20 benefits.

21 **EIGHTH AFFIRMATIVE DEFENSE**

22 21. Each and every action or statement made by Defendants was a good faith
23 assertion of Defendants' rights and, therefore, was privileged and justified.

24 **NINTH AFFIRMATIVE DEFENSE**

25 22. The actions alleged in the Complaint, if and to the extent that they took place,
26 were taken in good faith and were a lawful exercise of sound discretion and Defendants'
27 legal rights, and were based on a rational and reasonable consideration of the facts.

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TENTH AFFIRMATIVE DEFENSE

23. Under ERISA, Plaintiff is bound by the terms of the Plan documents, and may not now complain that it was not what he expected. Therefore, Plaintiff is barred from obtaining the recovery he seeks by way of the Complaint.

ELEVENTH AFFIRMATIVE DEFENSE

24. Under ERISA, Plaintiff is bound by the terms of the Plan documents, and may not justifiably rely on any alleged statement which contravenes the express language in the Plan documents. Therefore, Plaintiff is barred from obtaining the relief he seeks by way of the Complaint.

TWELFTH AFFIRMATIVE DEFENSE

25. Defendants are informed and believes, and based thereon allege, that if Plaintiff sustained any injury, damage, or loss, by reason of any act, error or omission of Defendants, or any of them (which Defendants deny), said injury, damage, or loss, if any, must be reduced on the basis of the comparative negligence of Plaintiff which contributed to and proximately caused any such injury, damage, or loss, incurred by Plaintiff.

THIRTEENTH AFFIRMATIVE DEFENSE

26. Any alleged damage suffered by Plaintiff was in no way caused by, or the result of, any fault, act or omission by Defendants, or any of them, but rather was caused by the actions of third parties for whom Defendants may not be held responsible and/or liable.

FOURTEENTH AFFIRMATIVE DEFENSE

27. The Plan provides that a participant's coverage under the Plan ends on the date that the participant ceases to be employed by the policyholder. Therefore, to the extent that Plaintiff became disabled after he was no longer employed by The Charles Schwab Corporation, he is not entitled to additional Plan benefits.

FIFTEENTH AFFIRMATIVE DEFENSE

28. The Plan contains the following provision:

"Disabilities, due to sickness or injury, which are primarily based on self-reported

1 symptoms, and disabilities due to mental illness have a limited pay period up to
2 24 months.”

3 Plaintiff’s claim is based on self-reported symptoms and/or mental illness. Unum
4 paid Plan benefits to Plaintiff for the 24 month period March 17, 2001 – March 16, 2003.
5 Therefore, Plaintiff is not entitled to further Plan benefits under 29 U.S.C. §§ 1132, *et seq.*

6 **SIXTEENTH AFFIRMATIVE DEFENSE**

7 29. Under ERISA a claim for Plan benefits may only be brought against the Plan.
8 Therefore, Unum is not a proper party to Plaintiff’s Complaint.

9 **SEVENTEENTH AFFIRMATIVE DEFENSE**

10 30. Under ERISA’s civil enforcement scheme (29 U.S.C. §§ 1132 *et seq.*),
11 Plaintiff may recover back benefits, and (in the Court’s discretion) prejudgment interest and
12 reasonable attorney’s fees. Plaintiff may not recover future Plan benefits. Therefore,
13 Plaintiff’s claim for this form of recovery is legally unsupportable.

14 **EIGHTEENTH AFFIRMATIVE DEFENSE**

15 31. Plaintiff’s claim is barred by the applicable statutes of limitation as provided
16 in the Plan and/or under ERISA.

17 **NINETEENTH AFFIRMATIVE DEFENSE**

18 32. Plaintiff’s claim does not meet the requirements for recovery of Plan benefits;
19 therefore, Plaintiff is not entitled to recovery of attorney’s fees against the Plan.

20 **TWENTIETH AFFIRMATIVE DEFENSE**

21 33. Unum’s offer to reassess Plaintiff’s claim under certain terms and conditions,
22 with which Plaintiff did not comply, does not create a right of action for Plan benefits.

23 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

24 34. Because the Court may only review Defendants’ claim determination for
25 abuse of discretion, the Court’s review is limited to the documents contained in the
26 administrative record at the time Unum made its final determination, and may not rely on
27 any evidence that is extrinsic to the record as of that date.

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TWENTY-SECOND AFFIRMATIVE DEFENSE

35. Defendants reserve the right to amend their Answer to Plaintiff's Complaint, including the right to include additional affirmative defenses.

WHEREFORE, Defendants pray for the following relief:

1. That Plaintiff's Complaint be dismissed with prejudice, and that Plaintiff take nothing thereby;
2. That judgment be entered in favor of Defendants and against Plaintiff;
3. That Defendant be awarded its costs of suit and attorney's fees; and
4. For such other and further relief as the Court may deem just and proper.

DATE: July 16, 2007

GREEN & HUMBERT

By: /s/ Horace W. Green

HORACE W. GREEN

C. MARK HUMBERT

Attorneys for Defendants

THE CHARLES SCHWAB DISABILITY

PLAN and

UNUM LIFE INSURANCE COMPANY

OF AMERICA